

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**THE GUARDIAN LIFE INSURANCE  
COMPANY OF AMERICA,**

**Plaintiff,**

**v.**

**THE ESTATE OF WALTER MATESIC,  
and ANN MATESIC,**

**Defendants.**

Civ. No. 2:16-00643

**ORDER & JUDGMENT**

**THIS MATTER** comes before the Court on Plaintiff's motion for default judgment against Defendants Estate of Walter Matesic and Ann Matesic pursuant to Federal Rule of Civil Procedure 55(b)(2). Plaintiff commenced this action on February 5, 2016. ECF No. 1. Plaintiff attempted to personally serve the Complaint on Defendant Ann Matesic multiple times at her last known address but was unsuccessful. On July 14, 2016, this Court issued an order granting Plaintiff's motion for substituted service, permitting Plaintiff to serve the Complaint by regular and certified mail. ECF No. 6. Defendants were subsequently served by regular and certified mail on August 29, 2016. ECF No. 9. The time for Defendants to answer or otherwise respond to the Complaint expired on September 19, 2016. *See* Fed. R. Civ. P. 12(a). To date, Defendants have failed to answer or otherwise respond to the Complaint. Pursuant to Federal Rule of Civil Procedure 55(a), the Clerk entered a Default against Defendants on September 12, 2016.

ECF No. 10. Plaintiff filed the instant motion for default judgment on October 12, 2016, and served Defendants with notice of the motion on that same day. ECF No. 11. No opposition has been filed.

“Before imposing the extreme sanction of default, district courts must make explicit factual findings as to: (1) whether the party subject to default has a meritorious defense, (2) the prejudice suffered by the party seeking default, and (3) the culpability of the party subject to default.” *Doug Brady, Inc. v. N.J. Bldg. Laborers Statewide Funds*, 250 F.R.D. 171, 177 (D.N.J. 2008) (citing *Emcasco Ins. Co. v. Sambrick*, 834 F.2d 71, 74 (3d Cir. 1987)). “In so considering, a court must accept as true every ‘well-plead’ factual allegation of the complaint.” *Chanel, Inc. v. Matos*, 133 F. Supp. 3d 678, 684 (D.N.J. 2015) (citing *Comdyne I, Inc. v. Corbin*, 908 F.2d 1142, 1149 (3d Cir. 1990)).

In this case, the Court finds that the facts set forth in the Complaint and the motion merit entry of a default judgment. First, the Court finds that there is no basis for Defendants to claim a meritorious defense because Defendants did not respond and Plaintiff has sufficiently pled that Defendants made material misrepresentations at the time of the life insurance policies’ execution. *See Teamsters Pension Fund of Phila. & Vicinity v. Am. Helper, Inc.*, No. 11-cv-624, 2011 WL 4729023, at \*4 (D.N.J. Oct. 5, 2011); *Mass. Mut. Life Ins. Co. v. Manzo*, 122 N.J. 104, 111–13 (1991). Second, it is clear that Plaintiff has been prejudiced by Defendants’ failure to answer because Plaintiff has been unable to move forward with the case, and has been delayed in receiving relief. *See Malik v. Hannah*, 661 F. Supp. 2d 485, 490-91 (D.N.J. 2009). Third, where, as here,

Defendants have failed to respond, there is a presumption of culpability. *See Am. Helper*, 2011 WL 4729023, at \*4.

For the foregoing reasons and for good cause shown;

**IT IS** on this 10th day of November 2013, hereby,

**ORDERED** that final judgment is entered in favor of Plaintiff and against Defendants; and it is further

**ORDERED** that the conditions precedent to the effectiveness of the policies of life insurance bearing policy numbers 6741705, 6741706, and 6830348 be and hereby are specifically enforced; and it is further

**ORDERED** that the policies of life insurance bearing policy numbers 6741705, 6741706, and 6830348 were and are not in effect and are null and void and of no legal force and effect; and it is further

**ORDERED** that the policies of life insurance bearing policy numbers 6741705, 6741706, and 6830348 are rescinded, *ab initio*, declared null and void, having no legal force and effect.

*/s/ William J. Martini*

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**WILLIAM J. MARTINI, U.S.D.J.**